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# Lee Yoke Yam v Chin Keat Seng

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FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02()-69–11 OF 2011(W)
ARIFIN ZAKARIA CHIEF JUSTICE, ABDULL HAMID EMBONG, HASAN LAH, ZAINUN ALI AND SULONG MATJERAIE FCJJ
28 NOVEMBER 2012

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*Tort — Defamation — Libel — Statements in police reports — Defence — Whether statements in police reports under s 107 of the Criminal Procedure Code protected by defence of absolute privilege — Whether plaintiff's claim against defendant should be struck out*

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Both the plaintiff and the defendants were at all material times the shareholders and members of the boards of directors of the Billion Group of Companies ('Billion'). When the managing director of Billion resigned, the defendant unilaterally declared himself as the chairman and chief executive officer of the company. The plaintiff and other shareholders and directors of the company

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were dissatisfied with the manner in which the defendant took full control of the company and excluded the plaintiff and other shareholders and directors. Thus, in a board of directors' meeting the plaintiff and other shareholders and directors of Billion voted to remove the defendant as managing director of Billion and replace him with another. The defendant filed a derivative action

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against the plaintiff and the other shareholders and directors of Billion and applied for an injunction to restrain the directors from replacing him as managing director ('MD') of Billion. At first the High Court allowed the defendant's application but it later set aside the ex parte injunction. The defendant who consequently ceased to be an MD appealed unsuccessfully to

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the Court of Appeal. In the course of the various applications filed by both parties the defendant had lodged a police report about the plaintiff. As a result of this police report the plaintiff filed a suit against the defendant claiming relief for defamation. The plaintiff claimed that the defendant had defamed him by lodging the police report alleging that the plaintiff had misappropriated

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RM200,000 from Billion. In his pleadings the plaintiff specifically pleaded and provided particulars of malice on the part of the defendant in making the police report so as to coerce the plaintiff into settling the various suits filed by the defendant against the plaintiff and other shareholders and directors of Billion. In his defence the defendant alleged that the plaintiff and other members of

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Billion's board of directors had sought to remove him as MD because he had wanted to investigate the wrongdoings of the plaintiff and others in Billion. Thereafter the defendant filed an application to strike out the plaintiff's action pursuant to O 18 r 19 of the Rules of the High Court 1980. The High Court found that defamatory statements in police reports were protected by the

defence of absolute privilege for reasons of public policy. As such, the High Court allowed the defendant's application and the plaintiff's claim was therefore dismissed. The plaintiff's appeal to the Court of Appeal was also dismissed. The plaintiff then obtained the leave of this court to proceed with the present appeal on the issue as to whether statements in police reports were protected by the defence of absolute privilege.

**Held**, dismissing the appeal with costs:
The decision of the Court of Appeal in *Abdul Manaf Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346 that the defence of absolute privilege should be extended to statements made in a police report under s 107 of the Criminal Procedure Code for reasons of public policy was correct. The underlying reason behind this was the overriding public interest that a member of the public should be encouraged to make a police report with regard to any crime that comes to his or her notice. Such public interest should override the countervailing consideration that this could sometimes lead to an abuse by a malicious informant. In any event, if a false report was lodged by a complainant, he was liable to be prosecuted for making a false report under ss 177, 182 or 203 of the Penal Code. That would provide a sufficient safeguard against any person from making a false report (see paras 32–33).

**[Bahasa Malaysia summary**

Kedua-dua plaintif dan defendan-defendan pada kesemua masa pemegang-pemegang saham dan ahli-ahli lembaga pengarah Billion Group of Companies ('Billion'). Apabila pengarah urusan Billion meletakkan jawatan, defendan secara unilateral mengisytiharkan dirinya sebagai pengerusi dan ketua pegawai eksekutif syarikat. Plaintif dan pemegang-pemegang saham dan pengarah-pengarah yang lain tidak berpuashati dengan cara di mana defendan mengambil alih kawalan syarikat tersebut dan mengecualikan plaintif dan pemegang-pemegang saham dan pengarah-pengarah yang lain. Oleh itu, di dalam mesyuarat lembaga pengarah plaintif dan pemegang-pemegang saham dan pengarah-pengarah Billion yang lain mengundi untuk membuang defendan sebagai pengarah urusan Billion dan menggantikan dia dengan yang lain. Defendan memfailkan tindakan derivatif terhadap plaintiff dan pemegang-pemegang saham dan pengarah-pengarah Billion yang lain memohon untuk injunksi untuk menghalang pengarah-pengarah daripada menggantikan dia sebagai pengarah urusan ('PU') Billion. Pada mulanya Mahkamah Tinggi membenarkan permohonan defendan tetapi ia kemudiannya mengenepikan injunksi ex parte. Defendan yang kemudiannya berhenti daripada menjadi PU tidak berjaya merayu kepada Mahkamah Rayuan. Dalam perjalanan pelbagai permohonan yang difailkan oleh kedua-dua pihak, defendan telah membuat laporan polis mengenai plaintif. Akibat laporan polis ini plaintif memfailkan tindakan terhadap defendan menuntut relief untuk fitnah. Plaintif menuntut bahawa defendan telah memfitnah dia dengan membuat laporan polis mendakwa bahawa plaintif

telah menyeleweng RM200,000 daripada Billion. Dalam plidingnya plaintif secara khusus memplid dan memberikan butir-butir niat jahat oleh pihak defendan dalam membuat laporan polis tersebut seperti memaksa plaintif untuk menyelesaikan pelbagai tindakan yang difailkan oleh defendan terhadap plaintif dan pemegang-pemegang saham dan pengarah-pengarah Billion yang lain. Dalam pembelaannya defendan mendakwa bahawa plaintif dan ahli-ahli lembaga pengarah Billion yang lain telah memohon untuk membuang dia sebagai PU kerana dia hendak menyiasat salah laku plaintiff dan yang lain-lain di Billion. Defendan kemudiannya memfailkan permohonan untuk membatalkan tindakan plaintif berikutan A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980. Mahkamah Tinggi mendapati bahawa penyataan fitnah di dalam laporan polis adalah dilindungi oleh pembelaan keistimewaan mutlak untuk alasan polisi awam. Oleh itu, Mahkamah Tinggi membenarkan permohonan defendan dan tuntutan plaintif oleh itu ditolak. Rayuan plaintif kepada Mahkamah Rayuan juga ditolak. Plaintif kemudiannya memperolehi izin mahkamah ini untuk meneruskan dengan rayuan ini atas isu sama ada penyataan-penyataan di dalam laporan polis dilindungi oleh pembelaan keistimewaan mutlak.

**Diputuskan**, menolak rayuan dengan kos:

Keputusan Mahkamah Rayuan di dalam kes *Abdul Manaf bin Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346 bahawa pembelaan keistimewaan mutlak patut dilanjutkan kepada penyataan yang dibuat di dalam laporan polis di bawah s 107 Kanun Acara Jenayah untuk alasan polisi awam adalah betul. Sebab asas di sebalik ini adalah kepentingan awam bahawa yang utama orang awam patut digalakkan membuat laporan polis berkenaan apa-apa jenayah yang telah berlaku di hadapannya. Kepentingan awam sedemikian patut mengatasi pertimbangan timbal balas bahawa ini boleh kadang-kadang membawa kepada penyalahgunaan oleh pemberi maklumat yang berniat jahat. Walau bagaimanapun, jika laporan palsu dilaporkan oleh pengadu, dia boleh didakwa kerana membuat laporan palsu di bawah ss 177, 182 atau 203 Kanun Keseksaan. Ini akan memberikan perlindungan yang mencukupi terhadap mana-mana orang daripada membuat laporan palsu (lihat perenggan 32–33).]

**Notes**

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 484–645.

**Cases referred to**

*Abdul Aziz bin Jelani & Anor v Peter Chua Swee Lai* [2000] 2 MLJ 462; [2000] 2 CLJ 402, HC (refd)

*Abdul Manaf bin Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346; [2009] 2 CLJ 121, CA (folld)

*Abu Samah bin Omar v Zainal bin Montel* [2004] 5 MLJ 377, HC (refd)

*Albert Chew v Hong Leong Finance Bhd* [2001] 4 MLJ 497, HC (refd)

*Bapalal & Co v AR Krishnaswami Aiyar* AIR 1941 Mad 26 (refd)
*Bira Gareri v Dulhin Somaria and Others* AIR (49) 1962 MYSORE, HC (refd)
*Henry Ong Keng Sem v Patrick Ong King Kok* [2008] 7 MLJ 569; [2008] 4 CLJ 276, HC (refd)
*Hoe Thean Sun & Anor v Lim Tee Keng* [1999] 3 MLJ 138; [1999] 1 CLJ 187, HC (refd)
*M Prabhkaran v Salam bin Seran* [2001] 6 MLJ 368; [2001] 3 CLJ 615, HC (refd)
*Martin Rheinus v Sher Singh* [1949] 1 MLJ 20; [1949] 1 LNS 49, CA (refd)
*Taylor v Director of the Serious Fraud Office* [1999] 2 AC 177, HL (refd)
*Thekkitill Gopalankutty Nair v Melepurath Sankumi Ezhuthaseah* AIR 1971 Ker 280 (refd)
*V Narayana Bhat v E Subbanna Bhat* AIR 1975 Kant 162, HC (refd)
*Westcott v Westcott* [2008] EWCA Civ 818, CA (refd)

**Legislation referred to**

Criminal Procedure Code ss 107, 112
Penal Code ss 177, 182, 203
Rules of the High Court 1980 O 18 r 19

*Wang Kuo Shing (Roger Peter with him) (Wang Kuo Shing & Co) for the appellant.*
*Oommen Koshy (Kwan Will Sen with him) (Skrine) for the respondent.*

**Arifin Zakaria Chief Justice (delivering judgment of the court):**

INTRODUCTION

**[1]** This is an appeal against the decision of the Court of Appeal dated 30 March 2011 which dismissed the appellant's appeal against the decision of the High Court dated 28 August 2009. This court had on 24 October 2011 granted the appellant's leave to appeal on the following question:

> Whether statements in a police report are protected by the defence of absolute privilege and therefore no party can file a defamation suit against the maker of the police report in the Malaysian context?

**[2]** In this judgment, the appellant will be referred to as the plaintiff and the respondent as the defendant, as they were in the High Court.

THE FACTS

**[3]** The facts giving rise to this appeal may be summarised as follows: Both the plaintiff and defendant were at all material times shareholders and

members of the board of directors of Billion Shopping Centre Sdn Bhd ('Billion') and its subsidiary or related company known as Billion Shopping Centre (Port Dickson) Sdn Bhd ('the company'). Beside the plaintiff and the defendant, there are two other persons who were and still are shareholders and directors of Billion and one other who was a shareholder and director but had since resigned as a director of Billion ('other shareholders and directors').

**[4]** In or about the end of 2005 and early 2006, the plaintiff, the defendant and other shareholders and directors agreed to confront another shareholder and director of Billion, one Ang, on financial irregularities in Ang's management of Billion and its related companies.

**[5]** Arising from the confrontation, Ang resigned from his position as managing director and/or executive director and/or director, in Billion and all its related companies and also offered to sell his shares to the plaintiff, the defendant and the other shareholders and directors.

**[6]** Upon Ang's resignation, the defendant unilaterally declared himself as the chairman and chief executive officer of the Billion Group of Companies. The defendant was the managing director of Billion until his removal and replacement by one of the other shareholders and directors, Wong Chee Leong ('Wong'), in a board of directors meeting held on 14 March 2006 ('the 14 March 2006 board meeting'). At the 14 March 2006 board meeting, the plaintiff and the other shareholders and directors voted to replace the defendant with Wong as managing director arising from a disagreement with the manner in which the defendant took over full control of Billion and the related companies to the exclusion of the plaintiff and the other shareholders and directors, including employing his own son, Chin Keat Wen, as the head of internal audit and his friend, Lim Kea Aung, as financial controller.

Shah Alam High Court suit

**[7]** On 12 April 2006, the defendant filed a derivative action against the plaintiff and the other shareholders and directors in the Shah Alam High Court vide Shah Alam Suit No MT3–22–404 of 2006 ('the Shah Alam suit') and applied for an injunction to restrain the directors of Billion from implementing the 14 March 2006 board meeting resolution to replace the defendant as managing director. The High Court allowed the defendant's application. The defendant was accordingly reinstated as the managing director of Billion.

**[8]** On 3 October 2006, the Shah Alam High Court, after hearing submissions from both parties, set aside the ex-parte injunction. The defendant accordingly ceased to be managing director of Billion with effect from

3 October 2006. On 13 October 2006, the defendant applied to the Court of Appeal for an erinford injunction. His application was dismissed.

**[9]** The defendant unsuccessfully appealed to the Court of Appeal against the decision of Shah Alam High Court.

The police report

**[10]** In opposing the injunction applied for by the defendant in the Shah Alam suit, the plaintiff and the other shareholders and directors filed several affidavits. One of the affidavits is the affidavit filed by the plaintiff dated 22 May 2006 ('the 22 May 2006 affidavit'). In that affidavit, the plaintiff stated that he had informed the defendant that, upon the instruction of Ang, he had deposited cash from the company in the sum of RM500,000 into the account of Ang and another RM200,000 into the account of another individual.

**[11]** On 19 June 2008, the defendant lodged a police report against the plaintiff in relation to the 22 May 2006 affidavit. The report was lodged in the Port Dickson Police Station vide Laporan Polis Port Dickson No 2508/08 ('the police report') wherein the defendant stated:

> Dalam bulan Oktober tahun 2005, saya telah menyoal Lee Yoke Yam selaku Bendahari/Pengarah Kewangan bagi keseluruhan Billion Group of Companies. Lee Yoke Yam telah mengaku kepada saya, beliau telah mengambil wang syarikat sebanyak RM200,000.00 dari Billion Shopping Centre (Port Dickson) Sdn Bhd.
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> Pengakuan beliau telah ambil RM200,000.00 juga telah disahkan dalam '3rd Defendant's Affidavit in Reply' berkaitan saman Suit No.: MT3-22-404-2006 di dalam Mahkamah Tinggi Shah Alam Bahagian Komersil.

This suit

**[12]** On 4 December 2008, the plaintiff then filed this suit against the defendant claiming relief for defamation (libel) and damages as the police report lodged by the defendant is libellous and injurious to the plaintiff.

**[13]** The plaintiff's cause of action against the defendant is grounded on defamation whereby the plaintiff contended that on 19 June 2008, the defendant had defamed him by lodging the police report alleging that the plaintiff had admitted misappropriating a sum of RM200,000 from Billion. In the pleadings, the plaintiff specifically pleaded and provided particulars of malice on the part of the defendant in making the police report in order to coerce the plaintiff into settling the Shah Alam suit and other suits filed by the defendant against the plaintiff and the other shareholders and directors.

**[14]** The defendant in his defence alleged that the plaintiff and other members of Billion's Board of Directors took control of Billion's Board and removed the defendant as Billion's Managing Director on 14 March 2006. The defendant alleged that, the reason being, the defendant had wanted to investigate the extent of misappropriation and fraudulent activities in Billion and its subsidiaries. The alleged wrongdoings by the plaintiff and the others are the subject matter of the Shah Alam suit, which is still pending.

**[15]** On 28 May 2009, the defendant filed a summons in chambers under O 18 r 19(a) and/or (b) and/or (d) of the Rules of the High Court ('the RHC') to strike out the plaintiff's writ and statement of claim as the same discloses no reasonable cause of action and/or it is scandalous, frivolous or vexatious and/or is otherwise an abuse of process of the court.

**[16]** On 28 August 2009, the High Court allowed the defendant's application, and the plaintiff's claim was therefore dismissed. In dismissing the plaintiff's claim, the learned judicial commissioner held as follows:

> On this issue, my view is this: the case of *Abdul Manaf Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346 is clear in that the Court of Appeal did rule that defamatory statement in police reports are within the protection of the defence of absolute privilege for reason of public policy. The Court of Appeal had discussed *Martin Rheinus*'s case which implicitly states that statements made in first information reports under s 107 of the Criminal Code and police statements made under s 112 of the same are covered under absolute privilege for the purpose of the law of defamation. The learned judge further argued that the case of *Ho Then Sun & Anor v Lim Tee Keng* [1999] 1 CLJ 187 which ruled that a defamatory statement in a police report is only protected by the defence of qualified privilege was decided as such because the case of *Martin Rheinus* was never brought to the attention of the court then. This was apparent from the report of *Ho Then Sun & Anor v Lim Tee Keng* [1999] 3 MLJ 138. The Court of Appeal had expressly ruled that the proposition of law as to police reports or information to the police is only protected under qualified privilege is wrong.
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> Hence, I am bound by the decision of the Court of Appeal in *Abdul Manaf Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346; [2009] 2 CLJ 121. Accordingly, the impugned defamation statement which was lodged in a police report by the defendant is protected by the principle of absolute privilege, thus the plaintiff's claim discloses no cause of action and is frivolous and vexatious. (Refer to *Law v Llewellyn* [1906] 1 KB 487).

## The Court of Appeal

**[17]** The plaintiff appealed to the Court of Appeal. On 30 March 2011, the Court of Appeal unanimously dismissed the plaintiff's appeal on the ground

that a police report is an occasion of absolute privilege. Jeffrey Tan Kok Wha JCA (later FCJ), in delivering judgment of the Court of Appeal had this to say:

> The impugned statements were contained in a police report. In *Abdul Manaf Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346; [2009] 2 CLJ 121, the Court of Appeal per Gopal Sri Ram held that police reports must attract absolute privilege as a matter of public policy. And we agree with that statement of law. We agree that the action could not succeed. The action was rightly struck out.

FINDINGS OF THIS COURT

**[18]** The sole issue before us is whether statements in a police report under s 107 of the Criminal Procedure Code ('the CPC') are protected by the defence of absolute privilege or otherwise.

**[19]** The High Courts in several cases have consistently held that a defamatory statement made in a police report is only protected by a qualified privilege as opposed to absolute privilege (see *Hoe Thean Sun & Anor v Lim Tee Keng* [1999] 3 MLJ 138; [1999] 1 CLJ 187; *M Prabhakaran v Salam bin Seran* [2001] 6 MLJ 368; [2001] 3 CLJ 615; *Albert Chew v Hong Leong Finance Bhd* [2001] 4 MLJ 497; *Abdul Aziz bin Jelani & Anor v Peter Chua Swee Lai* [2000] 2 MLJ 462; [2000] 2 CLJ 402; *Abu Samah bin Omar v Zainal bin Montel* [2004] 5 MLJ 377; and *Henry Ong Keng Sem v Patrick Ong King Kok* [2008] 7 MLJ 569; [2008] 4 CLJ 276).

**[20]** In 2008, the issue came for consideration of the Court of Appeal in the case of *Abdul Manaf Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346; [2009] 2 CLJ 121. In that case it was held that the defence of absolute privilege should also be extended to statement made in a police report under s 107 of the CPC for reasons of public policy. In delivering the judgment of the court, Gopal Sri Ram JCA (later FCJ) said:

> [3] When this appeal was called on, the attention of counsel on both sides was drawn to the decision of the Court of Appeal of the Federated Malay States in *Martin Rheinus v Sher Singh* [1949] 1 MLJ 201; [1949] 1 LNS 49, where it was held that a statement made by a person to a police officer in the course of police investigation is absolutely privileged. In the course of his judgment, Willan CJ referred, without any criticism, to the observation of the trial judge in that case as follows:
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> > He (the trial judge) held, however, that the statement was absolutely privileged, and, after citing several Indian cases, decided 'that no distinction can be drawn between the privilege which must be accorded to an information given to a police officer under s 107 of the Criminal Procedure Code and to a statement recorded by a police officer under s 112'.

A [4] It is implicit from *Martin Rheinus v Sher Singh* [1949] 1 MLJ 201; [1949] 1 LNS 49 that both statements made in first information reports under s 107 of the Criminal Procedure Code and in police statements made under s 112 thereof are absolutely privileged for the purpose of the law of defamation. I consider this to be good law. And I find support for the view I take of the matter from the decision of several Indian cases including *Bapalal & Co v V Krishnaswami Aiyar* AIR 1941 Mad 26. That was a case in which a letter of complaint to the police by the defendant alleging that the plaintiff had committed a crime was held to be absolutely privileged and therefore not actionable. By reason of what I have said thus far, I am unable to agree with the view expressed in *Hoe Thean Sun & Anor v Lim Tee Keng* [1999] 3 MLJ 138; [1999] 1 CLJ 187, that a defamatory statement in a police report is only protected by the defence of qualified privilege. It is apparent from the report of that case that the decision in *Martin Rheinus v Sher Singh* was not brought to the attention of the High Court. *There is no doubt that defamatory statements in police reports must attract the defence of absolute privilege for reasons of public policy. If actions can be brought against complainants who lodge police reports, then it would discourage the reporting of crimes to the police thereby placing the detection and punishment of crime at serious risk. The criminal law readily provides for a remedy against persons who make false police reports*. (Emphasis added.)

**[21]** Counsel for the appellant submitted that *Abdul Manaf bin Ahmad*'s case was wrongly decided and urged this court to restore the long standing position that such statement is only protected by qualified privilege.

**[22]** Let us now consider what was stated by Willan CJ in *Martin Rheinus v Sher Singh* [1949] 1 MLJ 201; [1949] 1 LNS 49:

> The main issue in the court below was whether this statement by the respondent was made under s 107 or under s 112 of the Criminal Procedure Code (Cap 6). If made under the latter section the respondent claimed it to be absolutely privileged. Although the learned trial judge found that a police investigation had already commenced before the statement was made, he did not come to a decisive finding that this statement had been made under s 112 of the Criminal Procedure Code. He held, however, that the statement was absolutely privileged, and, after citing several Indian cases, decided 'that no distinction can be drawn between the privilege which must be accorded to an information given to a police officer under s 107 of the Criminal Procedure Code and to a statement recorded by a police officer under section 112'.
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> In India, where the law relating to a police investigation is similar to the local law, it was decided in *Methuram Dass v Jaggannath Dass* ILR 28 Cal 794 that a statement made in the course of a police investigation was absolutely privileged. The reasoning in the judgement in that case is:

> In the present case the investigation was required by law; it was conducted under the provisions required by the law, it was ancillary to the administration of justice. The defendant was bound by law to answer all questions put to him by the police officer conducting the investigation and was punishable if he answered untruly and what was said by him had reference to the matter under investigation. Virtually the only distinction between his position and that of an ordinary witness arises from the fact that his statement was not made in a court of justice and we see no reason accordingly, to use the language of the Lord Chief Baron cited above — that was in the case of *Dawkins v Lord Rokeby* [1875] LR HL 744 — 'why public policy should not equally prevent an action being brought against him as against a witness in an ordinary court of justice.'

I agree with that decision and the reasoning for it.

**[23]** From the judgment of Willan CJ cited above, it is apparent that the trial judge in that case did not make a decisive finding on whether the statement was made under s 107 or s 112 of the Criminal Procedure Code (Cap 6). However, it was clear that when the statement was made, investigation had already commenced. The trial judge, however, made one important observation in his judgment: 'that no distinction can be drawn between the privilege which must be accorded to an information given to a police officer under s 107 of the Criminal Procedure Code and to a statement recorded by a police officer under s 112.' This was wholly approved by Willan CJ.

**[24]** The police report under s 107 of the CPC or sometimes referred to as the first information report, is the statement of information relating to the commission of an offence made to the police. It has two objectives. Firstly, it is to set the criminal law in motion and secondly it is to obtain early information of an alleged crime and to record the circumstances before it is forgotten, (see *Mallal's Criminal Procedure*, (6th Ed), at para 4176).

**[25]** Section 112 of the CPC, on the other hand, provides for the recording of statements from witnesses by the police in the course of police investigation. Any person making a statement under s 112 is bound to answer all questions relating to the case, and is legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions. That is why absolute privilege is accorded to statement made under s 112 of the CPC.

**[26]** However, it is trite that a statement made in coram judice ie statement made in judicial proceedings for example, during the examination of a witness, enjoys absolute privilege. It is urged upon us by the respondent that the immunity which attaches to a statement made in judicial proceedings, should likewise be extended to police report which is a statement leading to judicial proceedings. This is because a police report which from its very nature, is a statement which the complainant is prepared, if so called upon, to substantiate

on oath, and for that reason must be protected by absolute privilege. Consequently no action for defamation should lie against the maker of a police report.

Indian position

**[27]** In India, a statement contains in a police report enjoys absolute privilege. Thus, in the case of *Bapalal & Co v AR Krishnaswami Aiyar* AIR 1941 Mad 26, King J held as follows:

> I am accordingly of opinion that the weight of authority is in favour of the view that a complaint to a police officer from its very nature as a statement which the complainant is prepared later, if called upon to do so, to substantiate upon oath is absolutely privileged.

**[28]** Similarly in *V Narayana Bhat v E Subbanna Bhat* AIR 1975 Kant 162, M Sadanandaswamy J held at p 165:

> … With regard to the second illustration referred to by Blagden J, if the complaint to the police results in an unsuccessful prosecution the person defamed can only claim damages for malicious prosecution and not for defamation. In case the complaint to the police does not result in a prosecution, then also the persons defamed have no remedy in respect of defamatory statements made in such a complaint to the police. But if a false complaint is made to the police, the person who makes such a false complaint would be punishable either under s 182 or s 211 of the Indian Penal Code. It cannot therefore be said that a person against whom false charges are made in a complaint to the police, even if no further action is taken by the police authorities on such complaint, goes scot-free. I would, therefore, prefer to follow the earlier view of Division Bench of the same High Court in AIR 1939 Cal 477 and the other decisions referred to above which take the view that a complaint to a police officer is absolutely privileged.

**[29]** Hence, the Indian law has always accorded absolute privilege to statement made in a police report (z<ee also *Thekkitill Gopalankutty Nair v Melepurath Sankumi Ezhuthaseah* AIR 1971 Ker 280; and *Bira Gareri v Dulhin Somaria and Others* AIR (49) 1962 MYSORE).

English position

**[30]** Similarly in England, from a long line of authority, it is established that absolute privilege is accorded to statement made in a police report. In *Taylor v Director of the Serious Fraud Office* [1999] 2 AC 177, the House of Lords held:

In the first place, I cannot accept the proposition that persons who take part in the administration of justice are sufficiently protected by qualified privilege. This would be contrary to a long line of authority. It is the policy of law to protect such persons against baseless allegations of malice, and this requires nothing less than absolute immunity from suit.

**[31]** In the case of *Westcott v Westcott* [2008] EWCA Civ 818, Ward LJ, in delivering the judgment of the court observed:

> [34] In my judgment the answer is to be found in *Taylor v Director of the Serious Fraud Office*. That establishes that immunity for out of court statements is not confined to persons who are subsequently called as witnesses. The policy being to enable people to speak freely, without inhibition and without fear of being sued, the person in question must know at the time he speaks whether or not the immunity will attach. Because society expects that criminal activity will be reported and when reported investigated and, when appropriate, prosecuted, all those who participate in a criminal investigation are entitled to the benefit of absolute privilege in respect of the statements which they make. That applies whether they are informants, investigators, or prosecutors. The answer to the argument that immunity should not give protection to a malicious informer was tellingly given by Lord Simon of Glaisdale in *D v National Society for the Prevention of Cruelty to Children* [1977] 1 All ER 589 at 607; [1978] AC 222 at 233:
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> > I cannot leave this particular class of relevant evidence withheld from the court (the identity of the informant who gave information of ill treatment of children to the NSPCC) without noting, in view of an argument for the respondent, that the rule can operate to the advantage of the untruthful or malicious or revengeful or self-interested or even demented police informant as much as one who brings information from a high-minded sense of civic duty. Experience seems to have shown that though the resulting immunity from disclosure can be abused, the balance of public advantage lies in generally respecting it.
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> [35] The test proposed by Drake J in *Evans v London Hospital Medical College* [1981] 1 All ER 715; [1981] 1 WLR 184 received indorsement from their Lordships in *Taylor v Director of the Serious Fraud Office*. Thus the question is whether the oral statement made by the defendant and her subsequent written statement can each fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution or possible prosecution in respect of the matter being investigated.
>
> [36] The police cannot investigate a possible crime without the alleged criminal activity coming to their notice. Making an oral complaint is the first step in that process of investigation. In order to have confidence that protection will be afforded, the potential complainant must know in advance of making an approach to the police that her complaint will be immune from a direct or a flank attack. There is no logic in conferring

> immunity at the end of the process but not from the very beginning of the process. Mr Craig's distinction between instigation and investigation is flawed accordingly. In my judgment, any inhibition on the freedom to complain will seriously erode the rigours of the criminal justice system and will be contrary to the public interest. In my judgment immunity must be given from the earliest moment that the criminal justice system becomes involved. It follows that the occasion of the making of both the oral complaint and the subsequent written complaint must be absolutely privileged.

(See also *Buckley v Dalziel and Another* [2007] EWHC 1025 (QB))

**[32]** Premised on the above, we agree with the decision of the Court of Appeal in *Abdul Manaf Ahmad* that on public policy consideration, absolute privilege should be extended to a statement contained in a police report lodged under s 107 of the CPC as in the case of statement made under s 112 of the CPC. The underlying reason behind this, is the overriding public interest that a member of the public should be encouraged to make police report with regard to any crime that comes to his or her notice. Such a report is important to set the criminal investigation in motion. With such report, the alleged crime may be investigated and the perpetrator be brought to justice. It is without doubt that public interest should override the countervailing consideration that this may sometime lead to an abuse by a malicious informant. In any event, if a false report is lodged by a complainant, he is liable to be prosecuted for making false report under s 177, s 182 or s 203 of the Penal Code. That we believe provides a sufficient safeguard against any person from making a false report.

CONCLUSION

**[33]** For the above reasons, we would answer the question posed herein in the positive. Accordingly, we affirm the decision of the Court of Appeal and the appeal is dismissed with costs.

*Appeal dismissed with costs.*

Reported by Kohila Nesan